**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

Income Tax Application No. 150 of 1999

The Commissioner of Income Tax, Mumbai .. Applicant
V/s.
M/s. Jayashkumar Rasiklal & Co., Mumbai .. Respondent

Mr. E.P. Chopra for the Applicant
None present for the Respondent

**CORAM : S. RADHAKRISHNAN &**
**A.S. AGUIAR, JJ.**
**DATED : 20.06.2005.**

**P.C.:-**

1. Heard the learned counsel for the Applicant-Revenue. In the above, the Revenue is seeking reference on the following question of law:-

> "Whether on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the penalty levied u/s. 271(1)(c) of the I.T. Act amounting to Rs. 1,16,565/-?"

We have also perused the order passed by the Income Tax Appellate Tribunal dated 4.7.1997.

2. Having regard to the facts and circumstances of the case, we also find in the instant case, penalty ought not to have been levied. The Tribunal has rightly declined to refer the question of law by way of Reference as the same only involves a finding of fact. Under these circumstances, we find no merit in the above Application, the same stands dismissed.

**(S. RADHAKRISHNAN, J.)**

**(A.S. AGUIAR, J.)**